

Update on ESA Pesticide Consultations

June xx, 2017

Agenda

- Brief background and history of ESA-related issues
- National Academy of Sciences (NAS) report implementation
- Litigation and settlement agreements
- Stakeholder concerns
- Challenges
- Timeline

Background

- **ESA Authority**

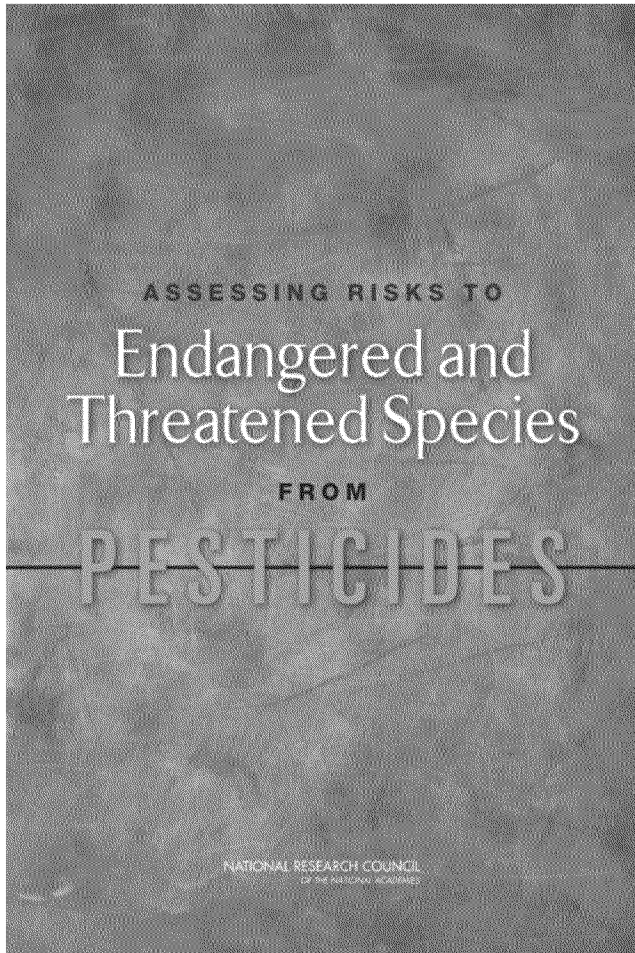
- Section 7(a)(2) of ESA: EPA makes “effects determination” for individual listed species in a biological evaluation (BE):
 - No effect (NE) – no consultation required
 - Overview Document-compliant method (2004): Risk Quotient (RQ) < listed species Level of Concern (LOC) (e.g., GMO-crop “no effect” determinations)
 - NAS-recommended method (2013): No geospatial co-occurrence of pesticide use footprint with listed species range
 - Not likely to adversely affect (NLAA) – informal consultation; concurrence from Services
 - Likely to adversely affect (LAA) – formal consultation including Biological Opinion (BiOp) from Services (jeopardy/no jeopardy determination)

- **Conventional pesticide decisions impacted by ESA:**

- Registration review actions (~50-60/yr)
- New chemical registrations (~10-12/yr)
- New use registrations (~50-60/yr)
- Section 18 Emergency Exemptions (~100/yr)
- Section 24(c) Special Local Need (SLN) registrations (~200/yr)

- **Nationwide consultations must consider direct/indirect effects to 1850 listed species and 600+ designated critical habitats**

NAS Report Implementation



- Released on April 30, 2013
- Developed in response to a joint request by EPA, NMFS, FWS, and USDA in 2011 to address scientific areas of disagreement
- Recommended 3-step process that integrates ecological risk assessment methods with ESA Section 7 consultations
- Goal: unified interagency approach with agreement on process across all steps
- Multiple interagency workshops where interim methods for EPA's BEs (Steps 1 and 2) have been developed
- Several stakeholder meetings held to engage public on potential refinements
- Interim methods need streamlining to meet available resources
- Final BEs for chlorpyrifos, diazinon, and malathion released in January 2017

NAS Report Implementation

- The **Biological Evaluation** (BE) determines whether registered pesticides adversely affect one or more individuals of a listed species and/or their designated critical habitats
 - **Step 1** [“No Effect/May Affect” Determination]
 - **Step 2** [“Not Likely to Adversely Affect (NLAA)/Likely to Adversely Affect (LAA) Determination]
- The **Biological Opinion** (BiOp) determines whether the registration of a pesticide is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its designated critical habitat
 - **Step 3** [“Jeopardy/No Jeopardy” Determination and “Adverse Modification/No Adverse Modification” Determination]



Litigation and Settlement Agreements

- Settlement agreements on ESA-litigation
 - Grand Bargain resolved 4 cases to allow agencies to focus ESA compliance and NAS report implementation on nationwide effects determinations and BiOps for 5 pesticides (chlorpyrifos, diazinon, malathion, carbaryl, and methomyl)

Ex. 5 - Deliberative Process

- EPA and FWS resolved 2 cases with Center for Biological Diversity (CBD) to set schedules for next 4 nationwide pesticide consultations (atrazine, glyphosate, simazine, and propazine)
 - EPA to complete final BEs in June 2020
 - FWS to complete final BiOps in June 2022
- Ongoing ESA challenges:

Ex. 5 - Deliberative Process

Stakeholder Concerns

- April 13, 2017 letter from registrants of 3 pilot OPs to political leadership of EPA and the Services requesting:
 - EPA to withdraw the BEs
 - Services to stop work on the BiOps
 - Services to modify settlement agreements to allow more time to complete consultation

Ex. 5 - Deliberative Process

Challenges

Ex. 5 - Deliberative Process

Current Pesticide Consultation Timeline

- **April 2013** – NAS report issued
- **November 2013** – release of interim scientific methods for implementing NAS recommendations
- **April 2016** - First draft BEs posted for public comment (chlorpyrifos, malathion, and diazinon)
- **June 2016** – 2-day stakeholder workshop
- **September 2016 to present** – Interagency workshops on BO process
- **September 2016** – Stakeholder meeting on mosquitocides uses
- **January 2017** – Final BEs for chlorpyrifos, malathion, and diazinon
- **April 2017** – Industry requests current pesticide consultations be put on hold

Ex. 5 - Deliberative Process